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CHANDIGARH ADMINISTRATION
DEPARTMENT OF SCIENCE & TECHNOLOGY & RENEWABLE ENERGY

Notification

The 24th November, 2023

3rd Amendments to the Chandigarh Electric Vehicle (EV) Policy, 2022

No. S&T&RE/2023/1374.—WHEREAS, the earlier notification vide no. S&T&RE/2022/893 dated 20.09.2022, S&T&RE/2023/504 dated 07.07.2023 & S&T&RE/2023/1119 dated 18.10.2023 was issued by the Department of Science and Technology & Renewable Energy, Chandigarh Administration vide which the "Electric Vehicle Policy, 2022" framed to build UT Chandigarh as a 'Model EV City' by achieving one of the highest penetration of zero emission vehicles amongst all Indian cities by the end of the Policy (19th Sep, 2027) period was notified.

AND WHEREAS, a meeting under the Chairmanship of Hon'ble Administrator, U.T., Chandigarh was conducted to review the implementation and effectiveness of the UT Electric Vehicle policy and undertook necessary amendments to achieve the objectives of the policy.

NOW, THEREFORE, the Administrator U.T., Chandigarh has approved the Amendments proposed to the Chandigarh EV Policy-2022 which is annexed herewith as **Annexure-1** and the Amendments will come into force with immediate effect.

These Amendments are available on official website of the department; solar.chd.gov.in under **News & Updates Section** as well as on Chandigarh Administration's website; chandigarh.gov.in.

Chandigarh :
The 24th November, 2023.

SH. NITIN KUMAR YADAV, IAS,
Adviser to the Administrator,
Chandigarh Administration.

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Annexure-I

- A. The capping on registration of Internal Combustion Engine Vehicles of all categories as per Clause 2.3 of policy stands omitted and other objectives of the EV Policy 2022 will continue.**
- B. New point No. 10 is inserted in Clause 4.1.2: *Provisions applicable across vehicle segments* in the Chandigarh EV Policy 2022:**
10. The tax rebate in Strong Hybrid Category will be given to the Strong Hybrid Cars only having price range below Rs. 20 Lacs (Ex Showroom price). The above tax benefit shall be extended only to Strong Hybrid Vehicles purchased and registered in the jurisdiction of U.T., Chandigarh and the Motor Vehicle tax rebate to the extent of 50% only be granted.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 25th October 2023

No. 13/2/35-HII(2)-2023/15725.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 9/2020 dated 07.08.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ANJALI W/O SH. AYYA SWAMI, R/O #1098/A, NEW COLONY, DHANASH, CHANDIGARH
(Workman)

AND

BHARTIYA VIDYA BHAWAN, JAISUKHLAL HATHI SADAN SECTOR 27-B,
CHANDIGARH THROUGH ITS CHAIRMAN SECRETARY & PRINCIPAL (Management)

AWARD

1. Anjali, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management w.e.f. 15.05.1993 as *Aya* (Maid) but her services were confirmed after 10 years from the actual date of appointment vide order No.BV/CHD/Estt/2003-04/425 dated 10.07.2003 at monthly wages of ₹1,450/-. Since appointment, she had continuously worked right up to 31.03.2018 and had performed her duties to the best of her abilities. Last drawn wages of the workman were ₹ 7,000/- per month. The workman successfully performed her allotted duties as per the instructions of the management. She is punctual and honest towards her duties. There was no single complaint towards her job and conduct. The management was entirely satisfied with her work & conduct. She was working under direct control and supervision of management. The school of the management is affiliated with CBSE so the school management is legally bound to comply with the Affiliation Bye Laws amended up to date. The management had not issued any leave card, wages slips and attendance card to the workwoman. She was allowed only 8 days sanctioned leaves with wages. One Ms. Geeta staff member of management used to take personal work from the workman like buying vegetable for her house, repair of her sandals from market etc. When the workman raised her voice against the said humiliation then the staff of management hatched conspiracy to remove the workman and they started moving complaints by leveling false allegations against the workman. With bad intention the management paid wages for half day despite full day work on each working day during the whole service period. The management has never been used transparency in maintaining the record of workman. The workman is not educated enough to know the technicalities of the Labour Law. She can work only and it is beyond her capacity to maintain her service record. On 01.04.2018 the management terminated the services of the workman vide termination order without following the mandatory provision of ID Act. When the workman approached the concerned authorities of the management, the workman was abused and the authorities used foul language without giving

proper reason of the termination of her service. The termination of services of the workman is malafide and in violation of principles of natural justice. The workman is totally unemployed since termination of her services. The workman has right to recover wages for remaining 4 hours of service period. The management intentionally prepared defective record of the workman. The management has not issued any memo, charge sheet or conducted any enquiry in any matter before illegal termination. The workman requested several times to concerned officer to take her back on duty verbally or in writing but the management did not hear her genuine requests. The management has not paid or offered notice pay in lieu of notice or compensation to the workman. The job of workman exists as it is till date and the junior to the workman are still retained in service by the management. Therefore, there is violation of Section 25-F, 25-G, 25-H and other provisions of the ID Act. The refusal to work is illegal by all means. Action of the management is based on the policy of 'Hire & Fire' and is colorable exercise of power. Termination of services of the workman has badly disturbed the workman and her family. The workman has no other source of income. The workman submitted demand notice to the school management through registered post. In spite of that the management did not give any response to the workman. Then on 05.10.2018 the workman raised demand notice before the Conciliation Officer U.T. Chandigarh. The conciliation proceedings failed. Hence, the present claim before this Court for adjudication. Prayer is made that termination order may be declared illegal and the workman may be reinstated into service with continuity of services, along with full back wages with interest @ 18% and other consequential benefits.

3. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 22.04.2021, wherein preliminary objections are raised on the ground that the schools under Bhartiya Vidya Bhavan were started in the 1938 for not only to impart knowledge or prepare students for examination but also to help the students to develop all around personality. The aim is to make students self-reliant and to enable them to face the challenges of life successfully. One of the most important objectives is to impart value education to students and to make them aware and feel proud of glorious cultural heritage, values and traditions. Bhavan Chandigarh has consistently pursued its goal of being a centre of excellence in the realm of academics and is in one of the top schools in Chandigarh. At the very outset itself; it is humbly submitted that save and except what has been expressly admitted or concluded hereunder, all averments and allegations made in the statement of claim are wrong, denied and disputed and no averment or part thereof may be construed as admitted or conceded directly or indirectly. Further, the objections and averments made in the present reply are without prejudice to one another. The present statement of claim is not maintainable since it has been filed against the law and facts. The applicant has neither locus-standi nor cause of action. Further, the statement of claim is liable to be dismissed as the applicant has deliberately concealed material facts from this Hon'ble Court. The respondent school had appointed the applicant as a part-time Aya (Maid) purely on temporary basis in Bhavan Vidyalaya, Sector 27 Chandigarh vide Management Order No.BV/CHD/Estt./2003-04/425 dated 10.07.2003 at a consolidated emoluments of ₹1,450/- per month. It is clearly evident from the appointment letter that the appointment could be terminated without any notice. The applicant was a part time Aya with the respondent school. Since her employment was no longer required due to her unsatisfactory performance, her employment was terminated as a simplicitor termination and is non-stigmatic. The respondent no longer requires the services of the applicant and her service is terminated as under Section 2(o)(bb) of the ID Act. Hence, Section 25-F, 25-G & 25-H of the ID Act do not apply as the removal of the applicant is not retrenchment as can be seen from the language and wordings of the termination letter. The respondent school has a Special Cell for the differently abled students with severe learning

difficulties, physical disabilities or behavioural problems. The Cell is specially made for the students with disabilities because these students need extra treatment, care, caters and special education due to their special status. It was brought to the notice of the respondent school by the parents of the children in the special cell that the applicant has demanded money from them on several occasions. Moreover, the applicant has taken money from the parents of the special children studying in Special Cell of the school. The management of the school had called the applicant to give explanation for the misconduct alleged, which is the applicant admitted to her misdeeds and requested for one more chance from the management in writing on 12.01.2017 and 18.01.2017 respectively. The respondent school had served a warning letter dated 19.01.2017 to the applicant regarding her taking money from the parents of the special children studying in special cell of the school. The applicant did the act of such nature on several occasions. She had demanded ₹ 20,000/- from a parent about three years back and ₹ 3,000/- as a bride from a parent for taking care of their ward. All these acts of the applicant were not acceptable and appropriate conduct. The warning letter clearly stated it as a very serious act and issued a final warning letter to the applicant. The respondent school was addressed a series of complaints against the applicant by the parents of the special children throwing light on the fact that the caretaker was physically harassing the children and their children are complaining of being scolded and physically pinched inside the school. The parents showed concern for their children highlighting that since special children require extra care and affection, the matter must be looked at with more seriousness. The parents of the Special Children have been threatening to take civil and criminal action against the school, its Principal and Teachers concerned due to illegal and unwarranted actions of the applicant. It is the duty and responsibility of the school towards the children / wards who are studying and in custody of the school for longer part of the day. The respondent school also received a complaint dated 02.12.2017 by the teachers of the Special Cell against the applicant wherein it stated that the caretakers were not abiding by the directions of the teachers. The management had apprised the applicant of the complaints received against her and further warned to improve her conduct. It is clearly stated in the warning letter dated 04.12.2017 that any further indiscretions will invite serious disciplinary action against her. The respondent school on 06.12.2017 received another complaint dated 06.12.2017 against the applicant by an anonymous student of Bhavan Vidyalaya who had eye-witnessed the caretaker behaving rudely, improperly and physically hitting a small child of the special cell. The teachers of the special cell also filed a complaint against the applicant mentioning that the applicant never improves her behavior and did not make any efforts to work properly and manage the children, which was required in the grounds during the athletic meet in the school. The teachers of the Special Cell had also asked firmly to replace the helpers of the special cell and questioned their ability to work with special children. Despite the fact that the respondent school were not under any obligation to provide the applicant prior notice for removing her, the school administration management warned her for in-disciplined activities and misconduct verbally and also through a warning letter. Several serious complaints against the applicant have been received even after providing two warning letters, led the respondent to take the decision of removing the applicant as a part time / temporary Caretaker (*Aya*) from the respondent school. The management of the school is a reputed school under the responsibilities in taking care and welfare of the students within the campus that too with higher degree of responsibilities towards the Special Children who are studying there. The series of acts by the applicant were not only unethical, unprofessional and unacceptable but also made the management vulnerable to criminal and civil prosecution by putting the safety and well being of children at jeopardy. The claim deserves to be dismissed with exemplary costs in view of gross misstatement of material facts by the applicant with deliberate *malafide* intentions.

4. Further in para-wise reply, it is denied that the applicant was a regular employee of respondent school. The applicant was working on a purely temporary basis as a part time *Aya* in the special cell of the respondent school, as is evident from the appointment letter dated 10.07.2003. It is also denied that her last drawn salary was ₹ 7,000/- per month. The applicant has never lived up to the expected conduct and professional standards of the school as well as had failed to take requisite care of the special children. The applicant had all the holidays and leaves as per the calendar of the school. The applicant does not disclose any specific instances where leave was denied to the applicant. This is clear after thought. It is specifically denied that the respondent school has not issued her leave card, wages slip and attendance record to the applicant. The provisions of Section 25-B of the ID Act are not applicable as the applicant was not regular and was appointed on purely temporary basis as part time *Aya* for the special cell of the school. No staff member of management has ever asked her to do any personal work. The applicant has misstated that the management staff had hatched conspiracy to remove the applicant from the school. The removal of the applicant is the decision of the management which took place due to her inappropriate conduct. Her allegations towards the staff of management are only misleading and hence have no relevance with the compliant. The respondent has not received any complaints from the applicant regarding Ms. Geeta or any other members of the staff. The applicant is called upon to produce strict proof thereof. The applicant was appointed as part time *Aya* on purely temporary basis and hence her duty hours were fixed to half day and the applicant was being paid for her part time services. The school management has fully maintained the record of the applicant's services and will produced whenever it will be required. The applicant was not interested in doing her duties and never made efforts to comply with the instructions to improve her conduct in the school while performing her duties. The applicant was served with a number of warning letters under the provisions of ID Act and also informed verbally on various occasions regarding her inappropriate behavior and conduct towards the special children studying in the school. The principles of natural justice were followed by the respondents as the applicant was given various opportunities and reminders regarding improvement of her conduct. Even though the applicant time and again committed the same offence and the management was receiving various complaints from the parents of the special children, teachers and staff of the school. The management has given various memos to the applicant regarding her conduct. She was also issued warning letters on various occasions. The applicant never made efforts to improve her conduct in spite of various warning letters. The management has cleared all dues payable to the applicant, as mentioned in her termination letter. The applicant is no longer an employee of the management after her termination from the services on 01.04.2018. The termination letter clearly mentioned that the accounts department was instructed to pay her the dues in full and final settlement of her accounts. The applicant never approached this Hon'ble Court with clean hands. The management had sufficient reasons to remove the applicant and the school also on regular intervals had warned her with both oral as well written warnings. The management has never concealed any facts from the Government Department for any wrong reasons. It is specifically denied that respondent school did not respond to the demand notice. The conciliation proceedings failed as both the parties remained firm on their respective stands and this fact was clearly stated in the order dated 16.09.2019 of the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh. The termination of the applicant is not verbal but one month's prior notice-cum-termination order and office order was issued to her on 27.02.2018 and 23.03.2018 respectively. The school has given the applicant opportunity to be heard and has followed the principle of natural justice. Hence, the claim of the applicant for reinstatement with full back wages and continuity in services are not maintainable.

and she does not deserve any relief as per settled Law. Averments made in preliminary objections were reiterated and remaining averments of the claim are denied. Prayer is made that claim statement may be dismissed with exemplary cost.

5. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 20.09.2021 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW

2. Relief.

7. On 25.03.2022 the workman examined herself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' and the case was fixed for recording cross-examination of AW1. Thereafter, the parties affected compromise. On 20.07.2023, the workman got recorded her statement, which is reproduced as below :—

"Stated that I have settled my dispute with the management vide agreement-cum-final settlement dated 17.07.2023 and have received cheque No.981394 dated 20.07.2023 for ₹ 2,50,000/- drawn on HDFC Bank, Sector 8-C, Chandigarh from the management towards full & final settlement of my claim whatsoever against the management including right of reinstatement. Copy of agreement-cum-final settlement and cheque is Mark 'A' and Mark 'B' respectively. I do not want to pursue my present industrial dispute being settled. The same may kindly be disposed of accordingly."

8. The statement of the workman is countersigned by her Representative. Heard. In view of aforesaid statement of the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 07.08.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 25th October 2023

No. 13/2/36-HII(2)-2023/15729.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 41/2019 dated 04.08.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BALWINDER SINGH S/O SHRI PRABHURAM, R/O HOUSE NO.1267/2, SECTOR 30-B,
CHANDIGARH (Workman)

AND

1. GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I. INDUSTRIAL AREA, CHANDIGARH, THROUGH ITS FACTORY MANAGER
2. HAWKS EYE SECURITY SERVICES PVT. LTD., SCO NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH, THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Balwinder Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman was appointed as a Helper on 19.05.2003 by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to prove straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No. 20 at the time of his removal. The workman is a 'workman' defined under Section 2(s) of the ID Act. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, though on papers it would be through contractor namely Hawks Eyes Security Services Pvt. Ltd. / management No. 2. It was further informed that the workman would be entitled for all the benefits. Accordingly, the workman was trained by the management No.1 and then deputed in the Hand Straightening Department. The process of Hand Straightening is to remove bends from the needles and to make needles straight with hands. The operation was done after process of automatic repair shortly named as R-Comb (Repair Combination). After Hand Straightening the product moves to final inspection and then packaging. Hence, the workman was engaged in a very crucial and important manufacturing / quality process of management No.1. The operation on which the workman was engaged was a regular work and hence about 30 workmen had been engaged by the management No.1 for this process. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period the work of the workman was controlled, supervised and assessed by its other engineers namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹17,250/- as gross salary including incentives and allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving an amount of ₹ 15,494/- per month at the time of his removal as salary by the management No.1 though through contractor. Management No.1 have paid ₹1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹ 3,000/- in 2010 while celebrating its Golden Jubilee Celebration. This was paid to all the employees of management No.1. The workman was also enjoying yearly increment given by

management No.1. The last drawn net salary of the workman is ₹ 15,494/-. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his work while he was in service. On 25.06.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patyal and he directed the workman not to come on duty from the next day and forced him to sign some blank papers but the workman refused for the same. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman all of a sudden without following the mandatory procedure laid down under the provisions of the ID Act. The junior employees than workman have been retained in the service, in violation of provisions of law by the managements. The said Hand Straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, the managements have utterly violated the provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of Hand Straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the Hand Straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The workman has served in the factory of management No.1 for continuous period from 19.05.2003 to 25.06.2018. The workman has completed 240 days in 12 calendar months preceding his termination. Previously, the workman has submitted demand notice dated 27.09.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, both the managements submitted its reply. The Conciliation Officer initiated conciliation proceedings but the same failed. Accordingly, Conciliation Officer vide letter Memo No.4436 dated 23.10.2019 advised the workman to refer Section 2-A of the ID Act and accordingly the claim. Prayer is made that the application may be allowed. The managements may be ordered to reinstate the service of the workman with continuity of service along with all consequential benefits.

3. On notice, management No.1 contested the claim statement by filing written statement on 07.01.2021 wherein preliminary objections are taken on the ground that the claimant/person concerned was never in the employment of management No.1 (GBA). There was no privity of contract between the concerned person and management No.1. As such, no employer-employee ever existed between management No.1 and the workman. Therefore, the question of appointment or termination of services of the concerned person by the management No.1 does not arise. The concerned person was employee of management No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970 (*here-in-after referred the 'CLRA'*). The concerned person was getting his monthly wages from management No.2 / contractor. Management No. 2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised and controlled by management No.2 / contractor, through its Supervisory / Assistant Supervisor. Therefore, the present statement of claim / reference is bad in the eyes of law, as such the same needs to be dismissed on this ground itself. The concerned person was employed by the management No. 2 (contractor). The services of the person concerned were regulated by the contractor in accordance with the CLRA Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person had the remedy to file claim under the CLRA Act, 1970 and Rules but not under the ID Act. Hence, the present statement of claim / reference needs to be rejected on this ground also. The services of the concerned person were not required by the contractor and the concerned person was offered alternative employment by management No.2 / contractor, which offer was not availed by the person concerned. Therefore, the present statement of claim / reference is not maintainable and is liable to be dismissed on this ground too.

4. Further on merits, it is stated that the concerned person was employee of management No.2 / contractor and he was deployed to work as Helper in the factory of management No.1 / GBA as a contract labour. Hence, the date of joining of the concerned person cannot be confirmed by management No.1 / GBA. The concerned person was duty by management No.2 / contractor to work as a Helper in the Hand Straightening Department. Being a contract labour of management No.2 / contractor, he was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the concerned person was controlled, supervised and assessed by supervisory / Assistant Supervisory of management No.2 / contractor. The concerned person was employee of management No.2 / contractor and therefore it is management No.2 who would confirm the rate of wages paid to the contractor. It is denied as wrong that management No.1 / GBA has ever paid ₹ 1,200/- as Diwali festival sweets or ₹ 3,000/- in 2010 on occasion of silver jubilee celebration. In fact management No.1, GBA has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages and other payment only from the management No.2 / contractor. It is denied for want of knowledge that the last drawn net salary of the workman was ₹ 15,494/-. It is denied that on 25.06.2018 the concerned person was called by Human Resource Officer Shri Ajay Patyal and that he directed the concerned person not to come on duty from the next date and he forced the concerned person to sign some blank papers, to which concerned person refused. In fact, the concerned was never called by Shri Ajay Patyal and he was never directed not to come on duty on the next date. He was never forced to sign on blank papers. The concerned person was employee of management No. 2 / contractor and hence the management No.1 / GBA had no role to play in the appointment or termination of the services of the concerned person. Section 20-G of the ID Act is not attracted in the present case. Management No.1 / GBA was having surplus manpower and in that situation management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. The claimant was one of such contract labour. Therefore, the regular work force of management No.1 / GBA was shifted to Hand Straightening Department. It is denied as wrong that the process of Hand Straightening improve the quality of needles. It is denied as wrong that without this process, the product of management No.1 can either be packed nor sold into the market. The Hand Straightening of needles is not perennial in nature. Management No.1 registered itself under CLRA Act, 1970. Management No.2 / contractor obtained licence under the CLRA Act, 1970 from the competent authority to supply the contract labour to management No.1 / GBA. Therefore, there was no illegality or any violation of CLRA Act, 1970 in outsourcing the Hand Straightening work to management No.2. It is denied that the concerned person have served for continuous period was an employee of management No.1 / GBA from 19.05.2003 to 25.06.2018. The concerned person was employee of management No.2 / contractor. It is admitted to the extent that the concerned person submitted demand notice dated 17.09.2018 for which the conciliation proceedings took place. Management No.1 / GBA and management No.2 / contractor submitted reply to the demand notice. The alternative employment was issued to the claimant by management No.2 (contractor) but the same was declined by the claimant. Consequently, conciliation proceedings failed. Rest of the averments of claim statement are denied as wrong and prayed is made that the claim statement / reference may be dismissed with exemplary cost.

5. Management No.2 / contractor contested the claim statement by filing written statement on 17.02.2021 wherein preliminary objections are raised on the ground that management No.2 is an agency that engages workers on contract according to the requirement of principal employer. The contract of management No. 2 with management No.1 is service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time the work generated became lesser and lesser, therefore management No.2 had to slowly reduce the manpower according to the work requirement of principal employer. The nature of work being temporary the workers were employed on day to day basis although their calculations of payment were done monthly. Since the work requirement reduced with the passage of time and the answering management being

concerned about the future of the concerned person arranged alternate employment for them, where it sought to adjust to them. The workman did not respond this gesture and continued on the present job knowingly fully well that the Hand Straightening work is coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening the needles as the orders dwindled and the work reduced the workers engaged by the answering management also reduced to about 20. Management No.1 ultimately closed the Hand Straightening work of the needles and the worker including the present one become surplus to the requirement and he was offered alternative employment at other places where the answering management has work requirement but the workman choose not to go there and thus, abandoned the employed. The answering management is still ready to offer them employment at other places on similar wages if possible. Management No. 2 has not been impleaded in a legal and proper manner. Therefore, the statement of claim is bad in law. The present statement of claim is liable to be rejected as the concerned workman is not competent to file the statement of claim under the ID Act. Thus, the statement of claim may be rejected on this ground.

6. On merits, it is stated that the workman was a piece rate worker, paid by number of needles he retrieved. He worked in the factory of management No.1. The timings of the workman were from 8:30 A.M to 5:00 P.M. with weekly off. The answering management had offered job to the workman at another place where the work was available but the workman was adamant to work at the premises of the management No.1 only and did not accept the offer of the answering management. The workman gainfully employed at another place. Further similar stand is taken as taken in the preliminary objection. Rest of the contents of the claim statement are denied as wrong and prayer is made that the workman is not entitled to any relief from management No. 2. The claim application / reference is liable to be dismissed with cost.

7. The workman filed rejoinder to the written statement of management No.1 wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 not filed.

8. From the pleadings of the parties following issues were framed vide order dated 06.09.2021 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No.1 and workman ? OPM-1
3. Relief.

9. In evidence workman Balwinder Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 16.03.2023 Learned Representative for the workman closed evidence in affirmative on behalf of the workman.

10. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive - HR M/s Groz Beckert Asia Pvt. Ltd. (GBA), Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M1'. The original of Exhibit 'M1' was brought at the time of recording testimony, which was seen and returned. During cross-examination MW1 placed on record authority letter dated 14.03.2023 Exhibit 'M4' whereby he has been authorised by the management to appear, make statement, lead evidence and tender document.

11. Management No.1 also examined MW2 Sukhjit Singh - Clerk, O/o Assistant Labour Commissioner, Sector 30-B, Chandigarh, who brought into evidence documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

12. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control), M/s GBA, who tendered his affidavit Exhibit 'MW3/A' along with copy of authority letter dated 26.05.2023 in his favour vide Exhibit 'M4' (mentioned as Exhibit 'M2' in the affidavit) and authority letter dated 14.03.2023 in

favour of Shri Harvinder Singh - General Manager (HR & Admin) / Factory Manager issued by the Managing Director of GBA vide Exhibit 'M5' (mentioned as Exhibit 'M3' in the affidavit). (The documents brought in the evidence of MW3 are given different exhibit numbers. In order to avoid any ambiguity, the authority letter dated 26.05.2023 and authority letter dated 14.03.2023 are renumbered and here-in-after referred as Exhibit 'M2' and Exhibit 'M3' respectively.)

13. Management No.2 did not lead any oral or documentary evidence. Learned Representative for management No.2 closed evidence on 20.07.2023. Learned Representative for management No.1 closed the evidence on 04.08.2023.

14. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are under :—

Issue No. 1 & 2 :

15. Onus to prove issue No. 1 is on the workman. Onus to prove issue No. 2 is on management No. 1. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

16. To prove its case, the workman Balwinder Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the contents of claim statement in toto, which are not reproduced here for the sake of brevity.

17. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive HR of GBA, who vide his affidavit Exhibit 'MW1/A' deposed that he is conversant with the facts of the present case. The workman concerned was employee of M/s Hawks Eye Security Pvt. Ltd. and was deployed / outsourced to work as a Helper in the factory of GBA, Chandigarh. There was no privity of contract between the workman concerned and GBA. No employer-employee relationship existed between the workman concerned and GBA. The workman concerned was paid his monthly wages by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was covered under respective EPF and ESI codes of M/s Hawks Eye Security Pvt. Ltd. The work & conduct of the workman concerned was looked after by M/s Hawks Eye Security Pvt. Ltd. through its Supervisor Smt. Krishna Rani. M/s Hawks Eye Security Pvt. Ltd. was engaged by GBA to undertake casual nature of work in the Hand Straightening Section of GBA i.e. to retrieve the good quality of needles out of the scrapped needles and to straighten them and for this process M/s Hawks Eye Security Pvt. Ltd. was to deploy / outsource its manpower including the workman in the factory of GBA. The arrangement was discontinued vide Exhibit 'M1' as the volume of Hand Straightening of needles was considerable reduced and it was decided to get this work done by the permanent employees of the management No.1. M/s Hawks Eye Security Pvt. Ltd. was advised to withdraw its contract labour deployed for hand straightening on or before 30.06.2018. The agreement for contract of work with M/s Hawks Eye Security Pvt. Ltd. is legal and not sham at all. The GBA is registered under the CLRA Act, 1970 vide certificate of registration No.PB/PE/CL/UT/CHD/2003/49 dated 08.01.2003 for engaging contract labour for casual work. M/s Hawks Eye Security Pvt. Ltd. is a licensed contractor having licence No.CL/UT/CHD/239 under the CLRA Act, 1970. The services of the workman concerned were never terminated by GBA. The concerned workman was never interviewed by GBA nor was his work ever controlled, supervised and assessed by Sh. Satish Sharma or by Sh. Lalit Mohan Kalia, Engineer of GBA. His attendance / leave record was maintained by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was not paid ₹ 1,200/- as Diwali festival sweets and ₹ 3,000/- in 2010 on the occasion of golden jubilee of GBA. He was never paid any amount whatsoever by GBA. The workman concerned was never called by him directing him not to come on duty from next day. He was never forced to sign on some blank paper. The concerned workman was never informed that he would be deputed on regular work and that his employment is regular. The concerned workman was deployed as Helper and no training was required to be given by the GBA. MW1 has supported his oral version with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M1'.

18. In order to prove the contract between management No.1 and 2, management No.1 examined MW2 Sukhjeet Singh, O/o Assistant Labour Commissioner, Sector 30, Chandigarh, who deposed that he has brought the summoned record. M/s Groz-Beckert Asia Pvt. Ltd. (G.B.A.) was issued certificate of registration under the Contract Labour (Regulation & Abolition) Act, 1970 first time on 08.01.2003. The certificate contains the names of the contractors including the name of M/s Hawks Eye Security Services Pvt. Ltd. (HESS). The certificate also contains the nature of work to be performed by the contract labour in the establishment of GBA i.e. canteen contractor, house-keeping, security, loading and unloading, casual work, civil work etc. The GBA used to get the certificate of registration renewed / amended from our department from time to time up to the year 31.12.2021. The copy of the certificate of registration issued to GBA accompanied with Memo No. 7579 dated 03.11.2003 is Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 is Exhibit 'MW2/2'. He further deposed that M/s Hawks Eye Security Services Pvt. Ltd. (HESS) was granted a license No. C.L./U.T./C.H.D/239 dated 26.02.2003 to deploy contract labour in the factory of GBA. The license issued to HESS has the endorsement on the top of the license showing GBA as Principal Employer (PE). The license contains the nature of work to be performed by the contract labour deployed by the contractor in the establishment of the principal employer (GBA), i.e. House-Keeping, Security, loading, unloading, casual work, civil work etc. The license of HESS was renewed up to 31.12.2017. Copy of the licenses along with endorsements containing 8 pages is Exhibit 'MW2/3'. MW2 further deposed that he has brought the original file of conciliation proceedings pertaining to the present case. The conciliation proceedings dated 05.10.2018 bears the signatures of the workman and the same were also signed by the Conciliation Officer (CO), copy of the same is Exhibit 'MW2/4'.

19. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control) of M/s GBA, who vide his affidavit Exhibit 'MW3/A' deposed that he joined the services of GBA on 06.05.1997 and now has been working in its quality control department as Assistant Manager (Quality Control). Shri Satish Sharma was also working in his department as Assistant Engineer (Quality Control). Shri Satish Sharma retired on 04.04.2019. Neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workers deployed by the contractor in the Hand Straightening Department. The work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who deployed by the contractor. He has been authorized by the Factory Manager of GBA to make statement before this Court in the present case. The authority letter is Exhibit 'M2'. The Factory Manager has been authorised by the Managing Director to authorize any official of the company to make statement before any Labour Court vide Exhibit 'M3'.

20. Learned Representative for the workman contended that the workman was appointed as a Helper by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to improve straightness quality in the Hand Straightening Department. The interview was conducted by Shri Manmohan Singh Dhaliwal, the then Factory Manager whereas on papers the appointment of workman was through the contractor Hawks Eyes Security Services Pvt. Ltd. / management No. 2. Any contract entered into between management No.1 and 2 to such effect is illegal / sham and to avoid legal liabilities in the hands of management No.1 as envisaged under the labour laws. Moreover, the workman through the process of hand straightening improves the quality of needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, the hand straightening process being regular process cannot be outsourced through contractor. About 30 workmen were engaged by management No.1 for this process. Apart from that work of the workman was supervised and assessed by Shri Satish Sharma and Shri Lalit Mohan Kalia Engineers of management No.1. The personal file, record of leave etc. of the workman was also maintained by its Human Resource Department. Management No.1 also paid ₹ 1,200/- on 18.10.2017 as Diwali festival sweets and ₹ 3,000/- in 2010 while celebrating its golden jubilee to all the employees of management No.1 including the workman. Besides, the workman was also given yearly increment by the management No.1. In this manner, there is a direct relationship of employer and employee between management No.1 and the workman.

21. On the other hand, learned Representative for management No.1 contented that there is no relationship of employer-employee between the management No.1 and the workman. The workman was appointed by management No.2 (contractor) and deployed to work in the establishment of management No.1. The workman was getting his monthly wages from management No. 2. Management No. 2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No. 2 / contractor. His work & conduct was also supervised and controlled by management No. 2 / contractor, through its Supervisor / Assistant Supervisor.

22. In order to determine the relationship of employer & employee between management No.1 & workman, it is important to refer cross-examination of workman i.e. AW1 Balwinder Singh. When put to cross-examination by management No.1, AW1 admitted as correct that he has impleaded management No.1 as principal employer and management No. 2 as contractor. AW1 admitted as correct that he was covered under EPF and ESI under the respective code of management No.2. AW1 admitted as correct that he was getting his monthly wages directly from management No. 2. AW1 admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of the contract between management No.1 and management No. 2 and their work was given to the permanent employee of management No.1. AW1 in his cross-examination further stated that if any offer of alternative employment is given to him today by management No. 2, then he is not ready to accept the same. AW1 admitted as correct that he was employee of management No. 2 (Hawks Eye Security). AW1 voluntarily stated that he was interviewed by Manmohan Singh Dhaliwal, HR Manager of management No.1 who told him that he has been given job as permanent employee of GBA. AW1 further stated that he do not have any proof in support of his voluntarily statement. AW1 further stated that during tenure of his service under the contractor / management No. 2 he never made any protest that he was interviewed by management No.1 and he has not been given permanent job. AW1 admitted as correct that the activity of Hand Straightening Department was subject to fluctuation. AW1 admitted as correct that due to fluctuation and un-certainty of work in the Hands Straightening Section, the employees were deployed on contract basis through the contractor. The aforesaid version of would prove that as per his own admission he was getting his wages directly from the contractor and was working as Helper in the factory of management No.1 being contractual employee of management No.2. The workman has failed to place on record any document showing that he was appointed by management No.1. The workman has admitted that he was withdrawn from the factory of management No.1 by the contractor on account of termination of contract between the management No.1 and the contractor. The workman / AW1 has categorically admitted that he was employee of the contractor. Furthermore, MW1 Ajay Kumar Patyal when to cross-examination by the workman stated that Smt. Krishna Rani, a retired employee of GBA was employed by the contractor M/s Hawks Eye Security Services Pvt. Ltd. and she was deputed as a Supervisor to supervise the operation of hand straightening. The denial on part of the workman / AW1 during his cross-examination that no Smt. Krishna Rani was working with the Hand Straightening Section of management No.1 and that his work was not supervised by her would prove that the version of the workman is not trust worthy and he has deliberately denied the factual position. The plea taken by the workman that his work was supervised and controlled by Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 has been disproved from the version of MW3 Lalit Mohan Kalia, who stated that neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workman. MW3 has stated that the work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who was deployed by the contractor. From the aforesaid version of MW3 it is duly proved on record that Smt. Krishna Rani deployed by the contractor was supervising the work & conduct of the workman and Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 never supervised the work & conduct of the workman. Moreover, the workman has failed to controvert the fact that his services were covered under the ESI and EF scheme by the contractor / management No.2. The expression

'control and supervision' in the context of contract labour was explained by the Hon'ble Supreme Court of India in case law titled as ***International Airport Authority of India Versus International Aircargo Workers' Union & Another***, reported in 2009(13) SCC 374 wherein in para 38-39 it is observed as below :—

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor; if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

The above mentioned case law is applicable to the facts of the present case to an extent. The workman has failed to produce any document on record to establish that he was direct employee of the principal employer. No document such as appointment letter, written contract, joining report, attendance register, leave record, PF record, ESI record is not produced by the workman showing existence of employer-employee relationship between the management of GBA and the workman. As discussed above, the workman / AW1 in his cross-examination has admitted that he was getting his wages directly from the contractor. AW1 in his cross-examination has also admitted that he was employee of the contractor. Accordingly, it is proved that the workman was working under the supervision and control of GBA i.e. principal employer but his control was secondary and the primary control was with M/s Hawks Eye Security Pvt. Ltd. i.e. contractor.

23. Learned Representative for the workman argued that GBA was not registered as principal employer under the CLRA Act, 1970 in the year 2003 or 2004 and M/s Hawks Eye was also not having licence or registration under the CLRA Act, 1970. Learned Representative for the workman had put suggestions to this effect to MW1 Ajay Kumar Patyal in his cross-examination, who denied the same as wrong. On the other hand, management No.1 has proved certificate of registration No.PE/CL/UT/CHD/2003/49 dated 08.01.2003 issued to GBA accompanied with Memo No.7579/03.11.2003 vide which the necessary amendment has been made in the registration certificate bearing No. PE/CL/UT/CHD/49 as Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 vide Exhibit 'MW2/2'. Management No.1 has also proved the licence No.CL/UT/CHD/239 dated 26.02.2003 granted to M/s Hawks Eye Security Pvt. Ltd. to deploy contract labour in the Factory of GBA vide Exhibit 'MW2/3'. The licence bears endorsements showing that the licence was renewed up to 31.12.2017. Thus, management No.1 has proved that there was a valid contract between management No.1 & 2 and the management No.2 was duly licensed to enter into agreement with the management No.1 to deploy the contract labour in the establishment No.1. Moreover, as per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the management reported ***1992(1) SCT 107 SC*** titled as ***Dina Nath & Others Versus National Fertilizers Limited & Others***, if the principal employer is getting registered under Section 7 of the CLRA Act, 1970 and the labour contractor is not getting licence under Section 12 of CLRA Act, 1970, the principal employer and the contractor are liable for prosecution for violation of Sections 7 & 12 of the CLRA Act, 1970. The persons employed by the principal employer through contractor would not become the employee of principal employer on account of violation of Section 7 & 12 of the CLRA Act, 1970. Another judgment referred by Learned Representative for the management reported in ***2006(1) SCT 701 (P&H)*** titled as ***M/s T.T. Public School***

Versus The Presiding Officer & Another, is also applicable to the facts of the present to an extent wherein it has been held that unregistered contractor does not cease to be a contractor nor the labour supplied by him will become the employee of the principal employer.

24. Learned Representative for the workman laid much stress upon the fact that agreement of contract if any exists between management No. 1 & 2 is merely a sham and paper transaction just to avoid the liability of employer towards the workman. In this regard MW1 Ajay Kumar Patyal when put to cross-examination by the workman denied the suggestion as wrong that arrangement of any contract, if exists is merely a sham and paper transaction just to avoid the liability of employer towards its workman. On the other hand, Learned Representative for the management has argued that in the present case the workman served a demand notice under Section 2-A of the ID Act challenging thereby his termination. Upon receipt of demand notice, the conciliation proceedings were initiated by the Conciliation Officer, U.T. Chandigarh. Management No.1 and management No.2 appeared during conciliation proceedings and filed their respective written comments. When no settlement took place between the parties, Learned Conciliation Officer on the basis of demand notice of the workman, was persuaded to refer the same for adjudication by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh as per sub-Section 2-A(2) of the ID Act. Thus, adjudication in the present case is to be confined to the subject matter of demand notice of the workman. None of the parties can be permitted to make out a new case than the one which was raised by it for which the appropriate Government / Conciliation Officer was persuaded to refer the same for adjudication. To support his argument Learned Representative for management No.1 referred the judgment reported in *AIR 1959 SC 1191* titled as *Calcutta Electric Supply Corporation Limited Versus Calcutta Electric Supply Workers Union & Others* and another judgment reported in *1978 LIC 1416 Calcutta* titled as *Bengal River Transport Association Versus Calcutta Post Shramik Union & Others*. To my opinion, the aforementioned argument advanced by Learned Representative for management No.1 carries force because perusal of demand notice dated 17.09.2018 raised by the workman under Section 2-A of the ID Act would show that the averments pleaded in para 11 of the claim statement are not part of the demand notice. In para 11 of claim statement, the workman has pleaded that the nature of work being done by the applicant is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the hand straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The aforesaid plea of contract between the managements No.1 & 2 being illegal / sham is not taken in the demand notice. The judgments referred by Learned Representative for management reported in *AIR 1959 SC 1191* and *1978 LIC 1416 Calcutta (supra)* are applicable to the facts of the present case to an extent. In the judgment reported in *AIR 1959 SC (supra)* it has been in para 5 as below :—

"5. As we have already pointed out, Mr. Kumar has drawn our attention to the fact that several awards have made similar provisions for medical relief of the employees' families; he also emphasised the fact that whereas prior to the present award the liability of the appellant to give medical relief to its employees was in a sense unlimited it has now been limited to the extent of one month's salary of each employee. In other words, his argument was that though an additional liability to provide for medical relief to the members of the workers' families strictly so called has been imposed on the appellant, a ceiling has been placed on the said liability by directing that no employee can claim relief more than his one month's salary. He has also drawn our attention to the fact that the appellate tribunal has specified that the said relief would be available only to the wife, unmarried daughters and minor sons of the respondents provided they are entirely dependant on them and lived with them. These are matters which would be relevant on the merits of the award. We propose to express no opinion on this aspect of the matter. We do not also propose to

express any opinion on the question as to whether a demand for medical aid for the families of the employees can be said to constitute an industrial dispute under Section 2(k) of the Industrial Dispute Act. If the respondents think that their claim for the medical relief for the members of their families is legitimate and can properly become the subject matter of an industrial dispute it is open to them to request the Government of West Bengal to refer the said question specifically or adjudication by an industrial tribunal; and if such a reference is made we have no doubt that it would be dealt with by the tribunal in the light of the contentions which parties may raise before it. It is true that such a dispute appears to have been referred to industrial adjudication in some cases and has in fact been recognised by awards; but we are not called upon to consider that aspect of the matter in the present appeal. In the result we must hold that the tribunals below exceeded their jurisdiction in entertaining a demand which was not the subject-matter of the reference. There can be no doubt that it is only the subject matter of reference with which an industrial tribunal can deal."

In the judgment reported in **1978 LIC 1416 Calcutta (supra)**, it has been held in para 16 as below :—

"16. The function of the National Tribunal is quasi-judicial but it is not a civil Court. It has no inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to by the appropriate Government by a reference."

25. The question that whether the contractor has been interposed for supply of contract labour for the work of principal employer under a genuine contract or is a mere ruse / camouflage can be looked into under the following two circumstances (a) on issuance of prohibition notification under Section 10(1) of CLRA Act, 1970 by the appropriate Government; (b) in an industrial dispute brought by the contract labour before the Industrial Adjudicator for adjudication. In the present case, neither any notification has been issued under Section 10 of CLRA Act, 1970 by the appropriate Government nor the contract labour has raised an industrial dispute seeking declaration of his employment condition by the Industrial Adjudicator. Therefore, the question with regard to the genuineness of the contract between principal employer / management No.1 and contractor / management No.2 cannot be determined in the present case. To such circumstances, the case law referred by Learned Representative for management No.1 reported in **AIR 2001 3527 SC** titled as **Steel Authority of India Limited Versus National Union Water Front Workers** is applicable to the facts of the present case to an extent wherein in para 124(5) it is held as below :—

"(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of the contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

26. In the present case, there is no order of termination of services of the workman. The management No.1 has taken the plea that management No.1 / GBA was having surplus manpower and in that situation the

management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. On the other hand, management No.2 taken the plea that since the work requirement reduced with the passage of time, therefore, the management No.2 offered alternative job to the workman at another place where the work was available but the workman was adamant to work at the premises of management No.1 only and did not accept the offer of management No.1. The aforesaid plea taken by the management No.1 & 2 stands proved from cross-examination of AW1 Balwinder Singh wherein he has admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of contract between the management No. 1 and management No.2 and their work was given to the permanent employees of the management No.1. AW1 when put to cross-examination by management No.1 stated that he was not given any offer of alternative employment by management No.2. AW1 when put to cross-examination by management No.2 stated that he had declined the offer of alternative employment given by management No.2 because he was offered less salary. From the aforesaid version of AW1 that he declined the offer of alternative employment because of less salary would support the plea of the management No.2 that management No. 2 offered alternative employment to the workman. The version of AW1 that he declined the offer because of less salary is not substantiated with any proof as AW1 in his cross-examination stated that he never made any representation to management No.2 that he has been offered less salary for alternate employment. AW1 further stated that after he was refused job by the management No.1, he never approached management No. 2 seeking alternative job. AW1 in his cross-examination stated that today he is not ready to work with the management No.2, if he is offered the job of Helper on current minimum wages. AW1 admitted as correct that today he is refusing to accept the job offer given by management No.2 as he is earning sufficient to maintain himself. AW1 further stated that in the present case he is seeking the relief of reinstatement from management No.1. From the aforesaid version of AW1 it is duly proved on record that the workman is not ready to accept the offer given by management No. 2 / contractor for alternative employment because he is earning sufficient to maintain himself and not on the ground of less salary. Moreover, the workman is not willing to work with any other organization except management No.1 with whom the contract of management No. 2 has already came to end. Consequently, there is no termination from services of the workman by its employer i.e. management No. 2.

27. Accordingly, issue No.1 is decided against the workman and in favour of the managements. Issue No.2 is decided in favour of management No.1 and against the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 04.08.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 25th October 2023

No. 13/2/37-HII(2)-2023/15731.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 109/2018 dated 04.08.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJINDER SINGH S/O SH. RAMESH CHAND, R/O H. NO.1850, PHASE - II,
RAM DARBAR, CHANDIGARH. (Workman)

AND

1. GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I. INDUSTRIAL AREA, CHANDIGARH, THROUGH ITS FACTORY MANAGER
2. HAWKS EYE SECURITY SERVICES PVT. LTD., SCO NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH, THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Rajinder Singh, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman was appointed as a Helper on 03.09.2009 by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to prove straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No. 29 at the time of his removal. The workman is a 'workman' defined under Section 2(s) of the ID Act. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, though on papers it would be through contractor namely Hawks Eyes Security Services Pvt. Ltd. / management No. 2. It was further informed that the workman would be entitled for all the benefits. Accordingly, the workman was trained by the management No.1 and then deputed in the Hand Straightening Department. The process of Hand Straightening is to remove bends from the needles and to make needles straight with hands. The operation was done after process of automatic repair shortly named as R-Comb (Repair Combination). After Hand Straightening the product moves to final inspection and then packaging. Hence, the workman was engaged in a very crucial and important manufacturing / quality process of management No.1. The operation on which the workman was engaged was a regular work and hence about 30 workmen had been engaged by the management No.1 for this process. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period the work of the workman was controlled, supervised and assessed by its other engineers namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹ 12,000/- as gross salary including incentives and allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving an amount of ₹10,451/- per month at the time of his removal as salary by the management No.1 though through contractor. Management No.1 have paid ₹1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹3,000/- in 2010 while celebrating its Golden Jubilee Celebration. This was paid to all the employees of management No. 1. The workman was also enjoying yearly increment given by

management No.1. The last drawn net salary of the workman is ₹10,451/-. The workman had not been given his salary of April 2018 on time and the same was paid on 06.07.2018 after filing of demand notice. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his work while he was in service. On 25.04.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patyal and he directed the workman not to come on duty from the next day and forced him to sign some blank papers but the workman refused for the same. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman all of a sudden without following the mandatory procedure laid down under the provisions of the ID Act. The junior employees than workman have been retained in the service, in violation of provisions of law by the managements. The said Hand Straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, the managements have utterly violated the provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of Hand Straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the Hand Straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The workman has served in the factory of management No.1 for continuous period from 03.09.2009 to 25.04.2018. The workman has completed 240 days in 12 calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, both the managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The Conciliation Officer initiated conciliation proceedings but the same failed. Accordingly, Conciliation Officer vide letter Memo No. 6855 dated 12.10.2018 advised the workman to refer Section 2-A of the ID Act and accordingly the claim. During the pendency of the conciliation proceedings before the Conciliation Officer, management No.2 to create elusion and false bona fide sent an ante dated letter dated 24.05.2018, actually sent on 13.06.2018, falsely stating that Hand Straightening Unit is closed at the management No.1 factory. When the workman contacted the management No.2, he was asked to work at some other place at a salary of ₹ 9,000/- which was much lower than the last paid salary of ₹ 12,000/-. The workman had made it clear to management No.2 that he is entitled to same wages as he was last paid and did not work for the lesser amount. However, no such offer was paid by management No.2 during the conciliation proceedings but again sent letter dated 26.06.2018. Prayer is made that the application may be allowed. The managements may be ordered to reinstate the service of the workman with continuity of service along with all consequential benefits.

3. On notice, management No.1 contested the claim statement by filing written statement on 07.06.2019 wherein preliminary objections are taken on the ground that the claimant/person concerned was never in the employment of management No.1 (GBA). There was no privity of contract between the concerned person and management No.1. As such, no employer-employee ever existed between management No.1 and the workman. Therefore, the question of appointment or termination of services of the concerned person by the management No.1 does not arise. The concerned person was employee of management No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970 (*here-in-after referred the 'CLRA'*). The concerned person was getting his monthly wages from management No.2 / contractor. Management No.2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised

and controlled by management No.2 / contractor, through its Supervisory / Assistant Supervisor. Therefore, the present statement of claim / reference is bad in the eyes of law, as such the same needs to be dismissed on this ground itself. The concerned person was employed by the management No. 2 (contractor). The services of the person concerned were regulated by the contractor in accordance with the CLRA Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person had the remedy to file claim under the CLRA Act, 1970 and Rules but not under the ID Act. Hence, the present statement of claim / reference needs to be rejected on this ground also. The services of the concerned person were not required by the contractor and the concerned person was offered alternative employment by management No.2 / contractor, which offer was not availed by the person concerned. Therefore, the present statement of claim / reference is not maintainable and is liable to be dismissed on this ground too. Since, there was no employment of the person concerned with the management No.1 / GBA, the question of termination of appointment of the concerned person by the management No.1, GBA does not arise. Hence, the present statement of claim / reference seeking relief from management No.1 / GBA is bad in the eyes of law and is liable to be dismissed on this score as well.

4. Further on merits, it is stated that the concerned person was employee of management No. 2 / contractor and he was deployed to work as Helper in the factory of management No.1 / GBA as a contract labour. Hence, the date of joining of the concerned person cannot be confirmed by management No.1 / GBA. The concerned person was duty by management No. 2 / contractor to work as a Helper in the Hand Straightening Department. Being a contract labour of management No.2 / contractor, he was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the concerned person was controlled, supervised and assessed by supervisory / Assistant Supervisory of management No.2 / contractor. The concerned person was employee of management No.2 / contractor and therefore it is management No.2 who would confirm the rate of wages paid to the contractor. It is denied as wrong that management No.1 / GBA has ever paid ₹ 1,200/- as Diwali festival sweets or ₹3,000/- in 2010 on occasion of silver jubilee celebration. In fact management No.1, GBA has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages and other payment only from the management No.2 / contractor. It is denied for want of knowledge that the last drawn net salary of the workman was ₹10,451/- and that workman had never been given his salary of April 2018 on time and the same was paid on 06.07.2018, after filing of demand notice. It is denied that on 25.04.2018 the concerned person was called by Human Resource Officer Shri Ajay Patyal and that he directed the concerned person not to come on duty from the next date and he forced the concerned person to sign some blank papers, to which concerned person refused. In fact, the concerned was never called by Shri Ajay Patyal and he was never directed not to come on duty on the next date. He was never forced to sign on blank papers. The concerned person was employee of management No.2 / contractor and hence the management No.1 / GBA had no role to play in the appointment or termination of the services of the concerned person. Section 20-G of the ID Act is not attracted in the present case. Management No.1 / GBA was having surplus manpower and in that situation management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. The claimant was one of such contract labour. Therefore, the regular work force of management No.1 / GBA was shifted to Hand Straightening Department. It is denied as wrong that the process of Hand Straightening improve the quality of needles. It is denied as wrong that without this process, the product of management No.1 can either be packed nor sold into the market. The Hand Straightening of needles is not perennial in nature. Management No.1 registered itself under CLRA Act, 1970. Management No.2 / contractor obtained licence under the CLRA Act, 1970 from the competent authority to supply the contract labour to management No.1 / GBA. Therefore, there was no illegality or any violation of

CLRA Act, 1970 in outsourcing the Hand Straightening work to management No. 2. It is denied that the concerned person have served for continuous period was an employee of management No.1 / GBA from 03.09.2009 to 25.04.2018. The concerned person was employee of management No. 2 / contractor. It is admitted to the extent that the concerned person submitted demand notice dated 03.06.2018 for which the conciliation proceedings took place. Management No.1 / GBA and management No.2 / contractor submitted reply to the demand notice on 24.07.2018 and 05.10.2018 respectively. The alternative employment was issued to the claimant by management No.2 (contractor) but the same was declined by the claimant. Consequently, conciliation proceedings failed. During conciliation management No.2, contractor offered alternate employment to the claimant with its other clients but this offer was denied by the claimant on the ground that he will not work at any other place except management No.1 / GBA. Rest of the averments of claim statement are denied as wrong and prayed is made that the claim statement / reference may be dismissed with exemplary cost.

5. Management No.2 / contractor contested the claim statement by filing written statement on 11.02.2020 wherein preliminary objections are raised on the ground that management No.2 is an agency that engages workers on contract according to the requirement of principal employer. The contract of management No.2 with management No.1 is service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time the work generated became lesser and lesser, therefore management No.2 had to slowly reduce the manpower according to the work requirement of principal employer. The nature of work being temporary the workers were employed on day to day basis although their calculations of payment were done monthly. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of the concerned person arranged alternate employment for them, where it sought to adjust to them. The workman did not respond this gesture and continued on the present job knowingly fully well that the Hand Straightening work is coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening the needles as the orders dwindled and the work reduced the workers engaged by the answering management also reduced to about 20. Management No.1 ultimately closed the Hand Straightening work of the needles and the worker including the present one become surplus to the requirement and he was offered alternative employment at other places where the answering management has work requirement but the workman choose not to go there and thus, abandoned the employed. The answering management is still ready to offer them employment at other places on similar wages if possible. Management No.2 has not been impleaded in a legal and proper manner. Therefore, the statement of claim is bad in law. The present statement of claim is liable to be rejected as the concerned workman is not competent to file the statement of claim under the ID Act. Thus, the statement of claim may be rejected on this ground.

6. On merits, it is stated that the workman was a piece rate worker, paid by number of needles he retrieved. He worked in the factory of management No.1. The timings of the workman were from 8:30 A.M to 5:00 P.M. with weekly off. The answering management had offered job to the workman at another place where the work was available but the workman was adamant to work at the premises of the management No.1 only and did not accept the offer of the answering management. It is denied that the workman was offered salary @ ₹ 9,000/- only. The workman gainfully employed at another place. Further similar stand is taken as taken in the preliminary objection. Rest of the contents of the claim statement are denied as wrong and prayer is made that the workman is not entitled to any relief from management No.2. The claim application / reference is liable to be dismissed with cost.

7. The workman filed rejoinder to the written statement of management No.1 wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated. Rejoinder to written statement of management No. 2 not filed.

8. From the pleadings of the parties following issues were framed vide order dated 09.02.2021:-
1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
 2. Whether there exists no employer-employee relationship between management No.1 and workman ? OPM-1
 3. Relief.

9. In evidence workman Rajinder Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with letter dated 20.06.2018 issued by management No.2 to the workman relating to the subject of reminder for relocation of services Exhibit 'W1'. During the cross-examination of AW1 management No.1 put documents Exhibit 'M1' and Exhibit 'M2' to the witness.

Exhibit 'M1' is copy of written comments dated 05.10.2018 submitted by M/s Hawks Eye Security Services Private Limited (management No.2 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

Exhibit 'M2' is copy of written comments dated 24.07.2018 submitted by M/s Groz-Beckert Asia Private Limited (management No.1 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

On 16.03.2023 Learned Representative for the workman closed evidence in affirmative on behalf of the workman.

10. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive - HR M/s Groz Beckert Asia Pvt. Ltd. (GBA), Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'. The original of Exhibit 'M3' was brought at the time of recording testimony, which was seen and returned. During cross-examination MW1 placed on record authority letter dated 14.03.2023 Exhibit 'M4' whereby he has been authorised by the management to appear, make statement, lead evidence and tender document. (Exhibit 'M4' is numbered twice due to inadvertence and in order to avoid any ambiguity authority letter dated 14.03.2023 is renumbered as Exhibit 'M4/1').

11. Management No.1 also examined MW2 Sukhjot Singh - Clerk, O/o Assistant Labour Commissioner, Sector 30-B, Chandigarh, who brought into evidence documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

12. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control), M/s GBA, who tendered his affidavit Exhibit 'MW3/A' along with copy of authority letter dated 26.05.2023 in his favour vide Exhibit 'M4' and authority letter dated 14.03.2023 in favour of Factory Manager issued by the Managing Director of GBA vide Exhibit 'M5'.

13. Management No.2 did not lead any oral or documentary evidence. Learned Representative for management No.2 closed evidence on 20.07.2023. Learned Representative for management No.1 closed the evidence on 04.08.2023.

14. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are under:-

Issue No. 1 & 2 :

15. Onus to prove issue No. 1 is on the workman. Onus to prove issue No.2 is on management No.1. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

16. To prove its case, the workman Rajinder Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the contents of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 has supported his oral version with document Exhibit 'W1'.

17. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive HR of GBA, who vide his affidavit Exhibit 'MW1/A' deposed that he is conversant with the facts of the present case. The workman concerned was employee of M/s Hawks Eye Security Pvt. Ltd. and was deployed / outsourced to work as a Helper in the factory of GBA, Chandigarh. There was no privity of contract between the workman concerned and GBA. No employer-employee relationship existed between the workman concerned and GBA. The workman concerned was paid his monthly wages by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was covered under respective EPF and ESI codes of M/s Hawks Eye Security Pvt. Ltd. The work & conduct of the workman concerned was looked after by M/s Hawks Eye Security Pvt. Ltd. through its Supervisor Smt. Krishna Rani. M/s Hawks Eye Security Pvt. Ltd. was engaged by GBA to undertake casual nature of work in the Hand Straightening Section of GBA i.e. to retrieve the good quality of needles out of the scrapped needles and to straighten them and for this process M/s Hawks Eye Security Pvt. Ltd. was to deploy / outsource its manpower including the workman in the factory of GBA. The arrangement was discontinued vide Exhibit 'M3' as the volume of Hand Straightening of needles was considerable reduced and it was decided to get this work done by the permanent employees of the management No.1. M/s Hawks Eye Security Pvt. Ltd. was advised to withdraw its contract labour deployed for hand straightening on or before 30.06.2018. The agreement for contract of work with M/s Hawks Eye Security Pvt. Ltd. is legal and not sham at all. The GBA is registered under the CLRA Act, 1970 vide certificate of registration No.PB/PE/CL/UT/CHD/2003/49 dated 08.01.2003 for engaging contract labour for casual work. M/s Hawks Eye Security Pvt. Ltd. is a licensed contractor having licence No.CL/UT/CHD/239 under the CLRA Act, 1970. The services of the workman concerned were never terminated by GBA. The concerned workman was never interviewed by GBA nor was his work ever controlled, supervised and assessed by Sh. Satish Sharma or by Sh. Lalit Mohan Kalia, Engineer of GBA. His attendance / leave record was maintained by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was not paid ₹1,200/- as Diwali festival sweets and ₹3,000/- in 2010 on the occasion of golden jubilee of GBA. He was never paid any amount whatsoever by GBA. The workman concerned was never called by him directing him not to come on duty from next day. He was never forced to sign on some blank paper. The concerned workman was never informed that he would be deputed on regular work and that his employment is regular. The concerned workman was deployed as Helper and no training was required to be given by the GBA. MW1 has supported his oral version with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'.

18. In order to prove the contract between management No.1 and 2, management No.1 examined MW2 Sukhjeet Singh, O/o Assistant Labour Commissioner, Sector 30, Chandigarh, who deposed that he has brought the summoned record. M/s Groz-Beckert Asia Pvt. Ltd. (G.B.A.) was issued certificate of registration under the Contract Labour (Regulation & Abolition) Act, 1970 first time on 08.01.2003. The certificate contains the names of the contractors including the name of M/s Hawks Eye Security Services Pvt. Ltd. (HESS). The certificate also contains the nature of work to be performed by the contract labour in the establishment of GBA i.e. canteen contractor, house-keeping, security, loading and unloading, casual work, civil work etc. The GBA used to get the certificate of registration renewed / amended from our department from time to time up to the year 31.12.2021. The copy of the certificate of registration issued to GBA accompanied with Memo No.7579 dated 03.11.2003 is Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 is Exhibit 'MW2/2'. He further deposed that M/s Hawks Eye Security Services Pvt. Ltd. (HESS) was granted a license No. C.L./U.T./C.H.D/239 dated 26.02.2003 to deploy contract labour in the factory of GBA. The license issued to HESS has the endorsement on the top of the license showing GBA as Principal Employer (PE). The license contains the nature of work to be performed by the contract labour deployed by the contractor in the establishment of the principal employer (GBA), i.e. House-

Keeping, Security, loading, unloading, casual work, civil work etc. The license of HESS was renewed up to 31.12.2017. Copy of the licenses along with endorsements containing 8 pages is Exhibit 'MW2/3'. MW2 further deposed that he has brought the original file of conciliation proceedings pertaining to the present case. The conciliation proceedings dated 05.10.2018 bears the signatures of the workman and the same were also signed by the Conciliation Officer (CO), copy of the same is Exhibit 'MW2/4'.

19. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control) of M/s GBA, who vide his affidavit Exhibit 'MW3/A' deposed that he joined the services of GBA on 06.05.1997 and now has been working in its quality control department as Assistant Manager (Quality Control). Shri Satish Sharma was also working in his department as Assistant Engineer (Quality Control). Shri Satish Sharma retired on 04.04.2019. Neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workers deployed by the contractor in the Hand Straightening Department. The work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who deployed by the contractor. He has been authorized by the Factory Manager of GBA to make statement before this Court in the present case. The authority letter is Exhibit 'M4'. The Factory Manager has been authorised by the Managing Director to authorize any official of the company to make statement before any Labour Court vide Exhibit 'M5'.

20. Learned Representative for the workman contended that the workman was appointed as a Helper by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to improve straightness quality in the Hand Straightening Department. The interview was conducted by Shri Manmohan Singh Dhaliwal, the then Factory Manager whereas on papers the appointment of workman was through the contractor Hawks Eyes Security Services Pvt. Ltd. / management No.2. Any contract entered into between management No.1 and 2 to such effect is illegal / sham and to avoid legal liabilities in the hands of management No.1 as envisaged under the labour laws. Moreover, the workman through the process of hand straightening improves the quality of needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, the hand straightening process being regular process cannot be outsourced through contractor. About 30 workmen were engaged by management No.1 for this process. Apart from that work of the workman was supervised and assessed by Shri Satish Sharma and Shri Lalit Mohan Kalia Engineers of management No.1. The personal file, record of leave etc. of the workman was also maintained by its Human Resource Department. Management No.1 also paid ₹ 1,200/- on 18.10.2017 as Diwali festival sweets and ₹ 3,000/- in 2010 while celebrating its golden jubilee to all the employees of management No.1 including the workman. Besides, the workman was also given yearly increment by the management No.1. In this manner, there is a direct relationship of employer and employee between management No.1 and the workman.

21. On the other hand, learned Representative for management No.1 contented that there is no relationship of employer-employee between the management No.1 and the workman. The workman was appointed by management No.2 (contractor) and deployed to work in the establishment of management No.1. The workman was getting his monthly wages from management No.2. Management No.2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised and controlled by management No.2 / contractor, through its Supervisor / Assistant Supervisor.

22. In order to determine the relationship of employer & employee between management No.1 & workman, it is important to refer cross-examination of workman i.e. AW1 Rajinder Singh. When put to cross-

examination by management No.1, AW1 admitted as correct that he has impleaded management No.1 as principal employer and management No.2 as contractor. AW1 admitted as correct that he was covered under EPF and ESI under the respective code of management No.2. AW1 admitted as correct that he was getting his monthly wages directly from management No.2. AW1 admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of the contract between management No.1 and management No.2 and their work was given to the permanent employee of management No.1. AW1 in his cross-examination further stated that if any offer of alternative employment is given to him today by management No.2, then he is not ready to accept the same. AW1 admitted as correct that he was employee of management No.2 (Hawks Eye Security). AW1 voluntarily stated that he was interviewed by Manmohan Singh Dhaliwal, HR Manager of management No.1 who told him that he has been given job as permanent employee of GBA. AW1 further stated that he do not have any proof in support of his voluntarily statement. AW1 further stated that during tenure of his service under the contractor / management No.2 he never made any protest that he was interviewed by management No.1 and he has not been given permanent job. AW1 admitted as correct that the activity of Hand Straightening Department was subject to fluctuation. AW1 admitted as correct that due to fluctuation and un-certainty of work in the Hands Straightening Section, the employees were deployed on contract basis through the contractor. The aforesaid version of would prove that as per his own admission he was getting his wages directly from the contractor and was working as Helper in the factory of management No.1 being contractual employee of management No.2. The workman has failed to place on record any document showing that he was appointed by management No.1. The workman has admitted that he was withdrawn from the factory of management No.1 by the contractor on account of termination of contract between the management No.1 and the contractor. The workman / AW1 has categorically admitted that he was employee of the contractor. Furthermore, MW1 Ajay Kumar Patyal when to cross-examination by the workman stated that Smt. Krishna Rani, a retired employee of GBA was employed by the contractor M/s Hawks Eye Security Services Pvt. Ltd. and she was deputed as a Supervisor to supervise the operation of hand straightening. The denial on part of the workman / AW1 during his cross-examination that no Smt. Krishna Rani was working with the Hand Straightening Section of management No.1 and that his work was not supervised by her would prove that the version of the workman is not trust worthy and he has deliberately denied the factual position. The plea taken by the workman that his work was supervised and controlled by Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 has been disproved from the version of MW3 Lalit Mohan Kalia, who stated that neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workman. MW3 has stated that the work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who was deployed by the contractor. From the aforesaid version of MW3 it is duly proved on record that Smt. Krishna Rani deployed by the contractor was supervising the work & conduct of the workman and Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 never supervised the work & conduct of the workman. Moreover, the workman has failed to controvert the fact that his services were covered under the ESI and EF scheme by the contractor / management No.2. The expression 'control and supervision' in the context of contract labour was explained by the Hon'ble Supreme Court of India in case law titled as ***International Airport Authority of India Versus International Aircargo Workers' Union & Another***, reported in **2009(13) SCC 374** wherein in para 38-39 it is observed as below :—

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor

as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

The above mentioned case law is applicable to the facts of the present case to an extent. The workman has failed to produce any document on record to establish that he was direct employee of the principal employer. No document such as appointment letter, written contract, joining report, attendance register, leave record, PF record, ESI record is not produced by the workman showing existence of employer-employee relationship between the management of GBA and the workman. As discussed above, the workman / AW1 in his cross-examination has admitted that he was getting his wages directly from the contractor. AW1 in his cross-examination has also admitted that he was employee of the contractor. Accordingly, it is proved that the workman was working under the supervision and control of GBA i.e. principal employer but his control was secondary and the primary control was with M/s Hawks Eye Security Pvt. Ltd. i.e. contractor.

23. Learned Representative for the workman argued that GBA was not registered as principal employer under the CLRA Act, 1970 in the year 2003 or 2004 and M/s Hawks Eye was also not having licence or registration under the CLRA Act, 1970. Learned Representative for the workman had put suggestions to this effect to MW1 Ajay Kumar Patyal in his cross-examination, who denied the same as wrong. On the other hand, management No.1 has proved certificate of registration No. PE/CL/UT/CHD/2003/49 dated 08.01.2003 issued to GBA accompanied with Memo No.7579/03.11.2003 vide which the necessary amendment has been made in the registration certificate bearing No. PE/CL/UT/CHD/49 as Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 vide Exhibit 'MW2/2'. Management No.1 has also proved the licence No. CL/UT/CHD/239 dated 26.02.2003 granted to M/s Hawks Eye Security Pvt. Ltd. to deploy contract labour in the Factory of GBA vide Exhibit 'MW2/3'. The licence bears endorsements showing that the licence was renewed up to 31.12.2017. Thus, management No.1 has proved that there was a valid contract between management No.1 & 2 and the management No.2 was duly licensed to enter into agreement with the management No.1 to deploy the contract labour in the establishment No.1. Moreover, as per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the management reported **1992(1) SCT 107 SC** titled as **Dina Nath & Others Versus National Fertilizers Limited & Others**, if the principal employer is getting registered under Section 7 of the CLRA Act, 1970 and the labour contractor is not getting licence under Section 12 of CLRA Act, 1970, the principal employer and the contractor are liable for prosecution for violation of Sections 7 & 12 of the CLRA Act, 1970. The persons employed by the principal employer through contractor would not become the employee of principal employer on account of violation of Section 7 & 12 of the CLRA Act, 1970. Another judgment referred by Learned Representative for the management reported in **2006(1) SCT 701 (P&H)** titled as **M/s T.T. Public School Versus The Presiding Officer & Another**, is also applicable to the facts of the present to an extent wherein it has been held that unregistered contractor does not cease to be a contractor nor the labour supplied by him will become the employee of the principal employer.

24. Learned Representative for the workman laid much stress upon the fact that agreement of contract if any exists between management No.1 & 2 is merely a sham and paper transaction just to avoid the liability of employer towards the workman. In this regard MW1 Ajay Kumar Patyal when put to cross-examination by the workman denied the suggestion as wrong that arrangement of any contract, if exists is merely a sham and paper transaction just to avoid the liability of employer towards its workman. On the other hand, Learned Representative for the management has argued that in the present case the workman served a

demand notice under Section 2-A of the ID Act challenging thereby his termination. Upon receipt of demand notice, the conciliation proceedings were initiated by the Conciliation Officer, U.T. Chandigarh. Management No.1 and management No.2 appeared during conciliation proceedings and filed their respective written comments. When no settlement took place between the parties, Learned Conciliation Officer on the basis of demand notice of the workman, was persuaded to refer the same for adjudication by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh as per sub-Section 2-A(2) of the ID Act. Thus, adjudication in the present case is to be confined to the subject matter of demand notice of the workman. None of the parties can be permitted to make out a new case than the one which was raised by it for which the appropriate Government / Conciliation Officer was persuaded to refer the same for adjudication. To support his argument Learned Representative for management No.1 referred the judgment reported in **AIR 1959 SC 1191** titled as **Calcutta Electric Supply Corporation Limited Versus Calcutta Electric Supply Workers Union & Others** and another judgment reported in **1978 LIC 1416 Calcutta** titled as **Bengal River Transport Association Versus Calcutta Post Shramik Union & Others**. To my opinion, the aforementioned argument advanced by Learned Representative for management No.1 carries force because perusal of demand notice dated 03.06.2018 raised by the workman under Section 2-A of the ID Act would show that the averments pleaded in para 11 of the claim statement are not part of the demand notice. In para 11 of claim statement, the workman has pleaded that the nature of work being done by the applicant is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the hand straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The aforesaid plea of contract between the managements No.1 & 2 being illegal / sham is not taken in the demand notice. The judgments referred by Learned Representative for management reported in **AIR 1959 SC 1191** and **1978 LIC 1416 Calcutta (supra)** are applicable to the facts of the present case to an extent. In the judgment reported in **AIR 1959 SC (supra)** it has been in para 5 as below :—

"5. As we have already pointed out, Mr. Kumar has drawn our attention to the fact that several awards have made similar provisions for medical relief of the employees' families; he also emphasised the fact that whereas prior to the present award the liability of the appellant to give medical relief to its employees was in a sense unlimited it has now been limited to the extent of one month's salary of each employee. In other words, his argument was that though an additional liability to provide for medical relief to the members of the workers' families strictly so called has been imposed on the appellant, a ceiling has been placed on the said liability by directing that no employee can claim relief more than his one month's salary. He has also drawn our attention to the fact that the appellate tribunal has specified that the said relief would be available only to the wife, unmarried daughters and minor sons of the respondents provided they are entirely dependant on them and lived with them. These are matters which would be relevant on the merits of the award. We propose to express no opinion on this aspect of the matter. We do not also propose to express any opinion on the question as to whether a demand for medical aid for the families of the employees can be said to constitute an industrial dispute under Section 2(k) of the Industrial Dispute Act. If the respondents think that their claim for the medical relief for the members of their families is legitimate and can properly become the subject matter of an industrial dispute it is open to them to request the Government of West Bengal to refer the said question specifically or adjudication by an industrial tribunal; and if such a reference is made we have no doubt that it would be dealt with by the tribunal in the light of the contentions which parties may raise before it. It is true that such a dispute appears to have been referred to industrial adjudication in some cases and has in fact been

recognised by awards; but we are not called upon to consider that aspect of the matter in the present appeal. In the result we must hold that the tribunals below exceeded their jurisdiction in entertaining a demand which was not the subject-matter of the reference. There can be no doubt that it is only the subject matter of reference with which an industrial tribunal can deal."

In the judgment reported in **1978 LIC 1416 Calcutta (supra)**, it has been held in para 16 as below :—

"16. The function of the National Tribunal is quasi-judicial but it is not a civil Court. It has no inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to by the appropriate Government by a reference."

25. The question that whether the contractor has been interposed for supply of contract labour for the work of principal employer under a genuine contract or is a mere ruse / camouflage can be looked into under the following two circumstances (a) on issuance of prohibition notification under Section 10(1) of CLRA Act, 1970 by the appropriate Government; (b) in an industrial dispute brought by the contract labour before the Industrial Adjudicator for adjudication. In the present case, neither any notification has been issued under Section 10 of CLRA Act, 1970 by the appropriate Government nor the contract labour has raised an industrial dispute seeking declaration of his employment condition by the Industrial Adjudicator. Therefore, the question with regard to the genuineness of the contract between principal employer / management No.1 and contractor / management No.2 cannot be determined in the present case. To such circumstances, the case law referred by Learned Representative for management No.1 reported in **AIR 2001 3527 SC** titled as **Steel Authority of India Limited Versus National Union Water Front Workers** is applicable to the facts of the present case to an extent wherein in para 124(5) it is held as below :—

"(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of the contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

26. In the present case, there is no order of termination of services of the workman. The management No.1 has taken the plea that management No.1 / GBA was having surplus manpower and in that situation the management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. On the other hand, management No.2 taken the plea that since the work requirement reduced with the passage of time, therefore, the management No.2 offered alternative job to the workman at another place where the work was available but the workman was adamant to work at the premises of management No.1 only and did not accept the offer of management No.1. The aforesaid plea taken by the management No.1 & 2 stands proved from cross-examination of AW1 Rajinder Singh wherein he has admitted as correct that

management No. 2 has withdrawn them from management No.1 on account of termination of contract between the management No. 1 and management No.2 and their work was given to the permanent employees of the management No.1. AW1 when put to cross-examination by management No.1 stated that he was not given any offer of alternative employment by management No.2. AW1 when put to cross-examination by management No.2 stated that he had declined the offer of alternative employment given by management No.2 because he was offered less salary. From the aforesaid version of AW1 that he declined the offer of alternative employment because of less salary would support the plea of the management No.2 that management No.2 offered alternative employment to the workman. The version of AW1 that he declined the offer because of less salary is not substantiated with any proof as AW1 in his cross-examination stated that he never made any representation to management No. 2 that he has been offered less salary for alternate employment. AW1 further stated that after he was refused job by the management No.1, he never approached management No. 2 seeking alternative job. AW1 in his cross-examination stated that today he is not ready to work with the management No. 2, if he is offered the job of Helper on current minimum wages. AW1 admitted as correct that today he is refusing to accept the job offer given by management No. 2 as he is earning sufficient to maintain himself. AW1 further stated that in the present case he is seeking the relief of reinstatement from management No. 1. From the aforesaid version of AW1 it is duly proved on record that the workman is not ready to accept the offer given by management No. 2 / contractor for alternative employment because he is earning sufficient to maintain himself and not on the ground of less salary. Moreover, the workman is not willing to work with any other organization except management No.1 with whom the contract of management No. 2 has already come to end. Consequently, there is no termination from services of the workman by its employer i.e. management No. 2.

27. Accordingly, issue No.1 is decided against the workman and in favour of the managements. Issue No.2 is decided in favour of management No.1 and against the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 04.08.2023.

Secretary Labour,
Chandigarh Administration.

CHANDIGARH ADMINISTRATION
DEPARTMENT OF EXCISE & TAXATION, U.T., CHANDIGARH

Notification

The 28 November, 2023

No. 13430.—In exercise of the powers conferred by section 3 read with Section 21 of the Union Territory Goods and Service Tax Act, 2017 (No. 14 of 2017) alongwith rules framed thereunder as amended from time to time and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh, hereby authorizes the officers specified below to exercise the powers of the Revisional Authority as specified in Under Sub Section 99 of Section 2 and Section 108 of the Central Goods and Services Act, 2017.

- a) The Excise & Taxation Commissioner, U.T, Chandigarh to be the Revisional Authority for decisions or orders passed by Additional Excise & Taxation Commissioner or Joint Excise & Taxation Commissioner or Assistant Excise & Taxation Commissioner, U.T, Chandigarh; and
- b) The Additional Excise & Taxation Commissioner or Joint Excise & Taxation Commissioner, U.T, Chandigarh to be the Revisional Authority for decisions or orders passed by the Assistant Excise & Taxation Commissioner, U.T, Chandigarh or Excise & Taxation Officer(s) , U.T, Chandigarh.
- c) The Assistant Excise & Taxation Commissioner, U.T, Chandigarh to be the Revisional Authority for decisions or orders passed by the Excise & Taxation Officer, U.T, Chandigarh.

(Sd.) . . . ,

Asstt. Excise and Taxation Commissioner,
Excise and Taxation Department,
U.T., Chandigarh.

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